

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

1:07cr32-6

UNITED STATES OF AMERICA,

Vs.

BRYAN LEMONT WILSON.

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ORDER

THIS MATTER is before the court on defendant's Motion to Withdraw His Plea, made in the form of a *pro se* paper writing. In that paper writing defendant stated that he had perjured himself when he appeared in front of the court in the earlier plea proceeding and stated under oath that he was guilty of the offenses to which he was pleading. Now that defendant has new counsel, he wishes to withdraw not the plea, but the motion to the effect that such plea was involuntary and was based upon perjured statements

Rather than withdraw the motion the court has determined that the better course of action is to strike the earlier plea as it is tainted by defendant's motion and the potential that it was based on false statements to the court. Inasmuch as no factual basis was taken in conjunction with such plea, defendant has a right to withdraw such plea with or without cause. Fed.R.Crim.P. 11. Defendant is advised that if he is able to reach a new plea agreement with the government, the court will require of defendant as well as the government a written stipulation of facts supporting the plea and that defendant, under penalty of perjury, personally make an in-court statement of facts that support any plea.

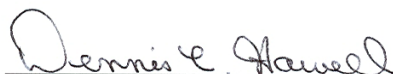
ORDER

IT IS, THEREFORE, ORDERED that defendant's Motion to Withdraw His Plea (#85) is **GRANTED**, this court acceptance of his plea is **WITHDRAWN**, and the Plea filed with the court is **STRICKEN**.

The court finds that the time between the filing of defendant's plea agreement and the entry of this Order is excludable under the speedy trial act as being "delay resulting from the consideration by the court of a proposed plea agreement" 18 U.S.C. § 3161(h)(1)(I).

The Clerk of this court is respectfully instructed to place Mr. Wilson's case back on the district court's trial docket.

Signed: October 2, 2007



Dennis L. Howell
United States Magistrate Judge

